Spring Co., 88 Mich. 390; *Pittsburg Guage Co.* v. *Ashton Valve Co.*, 184 Pa. St. 36; *Blair* v. *Laflin*, 127 Mass. 518; *Stevenson* v. *Morris Machine Works*, 69 Miss. 232; *Green* v. *Cole*, 127 Mo. 587; *Russell* v. *Manf'g. Co.*, 41 Neb. 567; *Treat* v. *Hiles*, 81 Wis. 280. See also the exhaustive note in 53 L. R. A. 33, and 8 AM. & ENG. ENC. OF LAW (2nd ed.) 620.

DEEDS—CONSIDERATION—PROMISE TO SUPPORT.—Plaintiff (74 years old) deeded all his land to defendant in consideration of defendant's promise to pay plaintiff's debts, and find him food, clothing, medical attendance, home, and other things needful to his condition, for the rest of his days; and after defendant had performed his part of the contract for some time, plaintiff brought this action to cancel the deed, for want of consideration. *Held*, that there was sufficient consideration to support the conveyance, though the defendant's promises were oral; and therefore that the judgment declaring the deed cancelled must be reversed. *Norris* v. *Lilly* (1905), — Cal. —, 82 Pac. Rep. 425.

The argument on which it was claimed that the consideration was insufficient, was want of mutuality, inasmuch as defendant had obtained performance of plaintiff's part, and the contract was of such a nature that specific performance could not be enforced against the defendant. A suit to cancel a similar deed on this ground was sustained, and the deed cancelled for this reason in *Grimmer* v. *Carleton* (1892), 93 Cal. 185, 28 Pac. 1043, 27 Am. St. Rep. 171; and this case was the reliance of plaintiff's counsel and the court below. The present case is worthy of note principally because it overrules that case and establishes the doctrine generally recognized that a deed is not invalid for want of mutuality if the grantor had any remedy for breach. While it is true that specific performance will not be decreed to one not himself liable to the same remedy, that doctrine has no application to this case; and though a contract may not be enforcible specifically, it does not follow that it is void. This case is also worthy of note as another of those sad and ill-advised cases of conveyance in consideration of support.

DEEDS—IMPLIED FEE—FEE ON FEE.—A deed was executed by parents to two of their children, conveying the homestead in these words: "In consideration of the sum of $2,400 in hand paid, convey and warrant to A. Fred Cover and Bessie Cover of [&c., describing the property and releasing homestead] * * * In case of the death of either A. Fred Cover or Bessie Cover, the other to have the whole of said property without litigation." A. Fred Cover died leaving several brothers and sisters and his mother his heirs. A creditor of one of these heirs of A. Fred had the interest of such heir levied on and sold on execution against such heir. Now Bessie files this bill to have such sale and certificate of sale declared void, and the title decreed to be in her absolutely. *Held*, that an estate in common to her and her brother for their joint lives was given by the deed, with a contingent remainder to the survivor in fee, which vested in her on the death of her brother. *Cover* v. *James et al.* (1905), — Ill. —, 75 N. E. Rep. 490.

The defendants contended that by virtue of the words convey and warrant a fee passed to the grantees, and that the added provision was an ineffectual

attempt to limit a fee on a fee; relying on *Palmer* v. *Cook* (1896), 159 Ill. 300, 42 N. E. 796, 50 Am. St. Rep. 165. In the case relied on the court had held, that the statute declaring that the words *convey and warrant* shall operate in deeds to pass a fee did have that effect and made void the attempted limitation over in these words: "in consideration of one dollar in hand paid, doth hereby grant, bargain, sell, convey, and warrant to Mary A. Stewart and Emily C. Stewart [grantor's daughters] of Macoupin county, the following real estate [describing it]; * * * and further, in case either of the grantees dies without a heir, her interest to revert to the survivor." The cases are rather close; but the words *her interest* and *revert* indicate that the grantor intended the fee to vest in the original grantees, which intention does not appear in the present case.

DEEDS—UNCERTAIN GRANTEE—HEIRS OF LIVING.—"This deed * * * between James Roberson and wife * * * of the first part and John B. F. Roberson heirs, of the County of Letcher and State of Ky., of the second part, witnesseth, that for and in consideration of the natural love and affection they have for their sd. son, and especially for his heirs, and for the further consideration of the performance of a contract herfb. to be written on their part, doth grant, bargain, and sell to the heirs of sd. John * * * [certain land described] to have and to hold to the said heirs of John" &c. *Held,* that the children of John took as purchasers, and the deed was not void for uncertainty of the grantees, though John was living. *Roberson* v. *Wampler* (1905), — Va. —, 51 S. E. Rep. 835.

It is an old, and generally admitted, doctrine that a grant or devise to the heirs of a living person is void for uncertainty. But the courts are astute in sustaining such grants by finding something in the transaction to indicate that the word *heirs* is not used in the technical sense, and that children or some other persons were meant. Usually this is found from expressions in the deed indicating that the grantor knew that the person named was then living. In the case above named the deed seems to throw no light on that point, unless the words "their sd. son" in the consideration clause refer to John, whose "heirs" are grantees. Several late cases on the question are cited in the opinion, including: *Heath* v. *Hewitt* (1891), 127 N. Y. 166, 27 N. E. 959, 13 L. R. A. 46, 24 Am. St. Rep. 438; *Seymour* v. *Bowles* (1898), 172 Ill. 521, 50 N. E. 122, in which the grantees were the "minor heirs"; *Fountain County Coal Co.* v. *Beckleheimer* (1885), 102 Ind. 82, 1 N. E. 202, 52 Am. Rep. 645, in which the grantees were the "present heirs," and numerous older cases.

DEEDS—VARIANCE BETWEEN THE GRANTING CLAUSE AND THE HABENDUM.—Where the granting clause of a deed follows the statutory form for a conveyance in fee simple and the habendum clause limits the estate to a life estate without mentioning the remainder, *held,* that the deed passed a life estate to the grantee. *Evans* v. *Dunlap* (1905), — Ind. —, 75 N. E. Rep. 297.

The technical rule is "that when the habendum is repugnant and contrary to the granting clause it is void. It can only affect the grant when it can be construed as consistent with the premises". (71 Mich. 633-640). At the